

**Housing and Property Chamber
First-tier Tribunal for Scotland**



**Decision of Housing and Property Chamber of the First-tier Tribunal for
Scotland
under Section 25 (1) of the Housing (Scotland) Act 2006**

Statement of Reasons of the Housing and Property Chamber of the First-tier
Tribunal for Scotland

(Hereinafter referred to as “the Tribunal”)

Under Section 60(5) of the Housing (Scotland) Act 2006

Case Reference Number: PRHP/RP/14/0289

Re : 13A Hunterhill Road, Paisley PA2 6SR (“the Property”)

Title No: REN59411

The Parties:-

**Anthony Walsh, residing formerly at 13A Hunterhill Road, Paisley PA2 6SR and
whose current residence is unknown (“the former Tenant”)**

**Kirsteen Mabel Ainsley Hunter, otherwise known as Kirsten Mabel Ainsley
Hunter, residing formerly at 13 Hunterhill Road, Paisley PA2 6SR and whose
current residence is unknown (“the former Landlord”)**

**Kim Pamela Gordon, and Michael Joseph Glancy, both residing at 20 Stewart
Drive, Clarkston, Glasgow G76 7EZ
 (“the Owners”)**

The Tribunal comprised:-

Mr David Bartos	- Legal member and Chairperson
Ms Sara Hesp	- Ordinary member (Surveyor)
Ms Elizabeth Dickson	- Ordinary member

Decision

The Tribunal certifies that the work required by the Repairing Standard Enforcement Order above relating to the Property dated 14 May 2015, has been completed.

Background

1. On or about 19 May 2015 the former Private Rented Housing Committee issued a Repairing Standard Enforcement Order (“RSEO”) in respect of the Property dated 14 May 2015. The works in the RSEO required to be completed by 8 weeks from the date of service of the RSEO on the Landlord.
2. On 23 October 2015 the Committee’s Surveyor member carried out a reinspection of the Property. She found that none of the work had been carried out. The surveyor member produced a Re-inspection Report dated 26 October 2015.
3. On 23 December 2015 the Committee made a decision that the Landlord had not complied with requirements of the RSEO at all. Consequent on this, on the same date, the Committee made a rent relief order of 20%.
4. With effect from 1 December 2016 the Committee was replaced by the Housing and Property Chamber of the First-tier Tribunal for Scotland. The Committee members continued to act as Tribunal members.
5. The Owners acquired ownership of the Property from the former Landlord on 4 March 2019. Notice of the RSEO was given to the Owners in the title to the Property. Further notice of the RSEO was given to the Owners by letters from the Tribunal dated 7 June 2019 and 30 December 2019.
6. By telephone call to the Tribunal on or about 21 January 2020 the Owners requested a copy of the RSEO and the Tribunal’s decision underlying it. By e-mail dated 23 January 2020 to the Tribunal the Owners requested a certificate of completion.
7. On 6 February 2020 the Tribunal’s Surveyor member carried out a reinspection of the Property. The surveyor member produced a Re-inspection Report dated 7 February 2020 setting out her findings.
8. In the reinspection, the Owners intimated that they have no intention of returning the property to the Private Rented Sector. In their e-mail to the Tribunal dated 29 January 2020 they intimated that they wished to obtain a mortgage that would “accommodate the Air BnB”.

9. The evidence before the Tribunal consisted of:-

- The Surveyor member's Re-inspection report for the Property dated 7 February 2020
- E-mail from Ms Gordon to the Tribunal dated 22 January 2020 with photographs attached
- E-mail from Ms Gordon to the Tribunal dated 29 January 2020
- The decision of the Committee dated 14 May 2015
- Letters from the Tribunal to Ms Gordon and Mr Clancy dated 7 June 2019 and 13 December 2019.

Findings of Fact

10. Having considered all the evidence, the Tribunal found the following facts to be established:-

(a) In the living room of the Property the walls have been stripped back and replastered throughout; replastering of the north-east (garden) wall is understood to have been completed at least two months prior to the latest re-inspection.

(b) In the north-east (garden) wall of the Property there was not an undue amount of moisture present.

(c) The wall was in good condition showing no evidence of rising damp;

(d) Outdoor vegetation adjacent to the north-east (garden) wall had been removed;

(e) The property has been undergoing complete refurbishment since purchased by the new Owners.

Reasons for Decision

11. In determining whether to certify the works in the RSEO as having been completed the Tribunal took the view that sufficient work had been completed to satisfy the requirements of parts (a) and (b) of the RSEO This was inferred from the findings of fact (a) to (d).

12. They considered that there was sufficient evidence to issue a Certificate of Completion particularly given the overriding objective to deal with proceedings in a manner which is proportionate to the complexity of the

issues. In these circumstances the Tribunal decided to issue a certificate of completion.

Minority View

13. The decision of the Tribunal was by majority.
14. One member of the Tribunal would have refused to certify the work as having been carried out. He took the view that findings in fact (a) to (d) were insufficient by themselves to allow a further finding that any work had been carried out to eliminate the rising damp that the Committee had found to be present in 2015.
15. The Tribunal had received no evidence that the former Landlord had carried out any work required by the RSEO. No evidence had been supplied by the Owners to the Tribunal showing that any damp proofing works had been carried out by them. Nor had any evidence been supplied that the damp proof courses in the wall had become sufficient to prevent damp from rising from the ground through the wall.
16. In fact from Ms Gordon's e-mail dated 29 January 2020 it appeared that the Owners had bought the Property at auction "and were given no paperwork for the entire house so we have been working blind". The e-mail stated, in relation to the RSEO and another enforcement order that "until last week were [sic] were completely unaware of these other two notices".
17. It seemed that the Owners were unaware of the RSEO – and its rising damp finding - when the replastering works were carried out. While the e-mail of 29 January 2020 stated "Our plasterer checked all the walls . . . for soundness before we plastered", it did not appear that he had been made aware of the RSEO and its finding of rising damp.
18. In short, the dissenting member took the view Tribunal was left in the dark as to what work, if any, had been carried out by the Owners to deal with rising damp. The statement in the e-mail from Ms Gordon that "the sub basement areas [i.e. the Property] required to be heated all year round. My thoughts are that the historic dampness was caused by lack of this" only added to his doubt as to what, if any, works had been carried out.
19. In these circumstances the dissenting member took the view that it was too great a leap to say that facts (a) to (d) led to a conclusion that any

work had been carried out to eliminate rising damp as required by the RSEO.

- 20. To put the question of what, if any, work had been done or was necessary beyond doubt, the dissenting member was of the view that the Owners should be directed to produce any documents that showed any work carried out to deal with the rising damp and any report that they might have relating to rising damp. Such a report could have produced a detailed assessment of the rising damp issue and what, if any, measures remained necessary. However as explained above the majority of the Tribunal did not share this view.

Rights of Appeal

- 21. A landlord or tenant or owner aggrieved by this decision may seek permission from the Tribunal to appeal on a point of law against this decision to the Upper Tribunal and that within 30 days beginning with the date when this decision was sent to the party seeking permission.
- 22. Unless the lease or tenancy between the parties has been brought to an end, the appropriate respondent in such permission or appeal proceedings is the other party to the proceedings and not the Tribunal which made the decision.

Effects of Section 63 of the 2006 Act

- 23. Where an application for permission to appeal is made, the effect of this decision is suspended until the application is abandoned or finally refused by the First-tier Tribunal (or upon subsequent application for permission to the Upper Tribunal, finally refused by it) or any subsequent appeal to the Upper Tribunal is abandoned or finally refused.
- 24. In the event of such application or appeal this decision is to be treated as having effect from the day on which the application was abandoned or finally refused or the later day on which the appeal is abandoned or finally refused.

D Bartos

Signed
2020.....

.....Date: 19 February

David Bartos, Chairperson